

## **REMARKS**

This amendment and these remarks are responsive to the non-final Office action dated July 22, 2005, and are being submitted under 37 C.F.R. § 1.111. Claims 1, 2, 4-31, and 43-55 are pending in the application. In the Office action, the Examiner rejected all claims as follows:

- Claims 1-2, 4, 7-8, 10-24, 28, 30-31, 44, 47-52, 54, and 55 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Serial No. 09/939,412 (Pub. No. US 2003/0040748) to Aikins et al. ("Aikins");
- Claims 1, 4, 7, 8, 10, 12, 14-19, 21, 22, and 24 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,865,025 to Buzzi et al. ("Buzzi");
- Claims 28, 30, 31, 52, 54, and 55 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,364,399 to Lowery et al. ("Lowery");
- Claims 5, 6, 27, 29, 43, 45, 46, and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aikins in view of U.S. Patent No. 5,709,686 to Talos et al. ("Talos");
- Claims 29 and 53 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lowery in view of Talos;
- Claims 5, 6, and 27 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Buzzi in view of U.S. Patent No. 5,766,174 to Perry ("Perry"); and
- Claims 9, 25, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Aikins in view of U.S. Patent No. 6,540,753 to Cohen ("Cohen") or over Buzzi in view of Cohen.

Applicants traverse the rejections, contending that rejected claims 1, 2, 4-31, and 43-55 are neither anticipated nor obvious. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have amended claims 1, 4, 6, 9, 12,

13, 15, 16, 18, 23, 26, 28, and 43; have canceled claims 2 and 44-55, without prejudice; and have added new claims 56 and 57. Applicants reserve the right to pursue any of the amended or canceled claims, in original or amended form, at a later time. Furthermore, applicants have presented arguments showing that claims 1, 4-31, 43, 56, and 57 are neither taught nor suggested by any of the references of record. Accordingly, applicants respectfully request reconsideration of the rejected claims, and prompt issuance of a Notice of Allowability covering all of the pending claims.

***I. Information Disclosure Statement***

Applicants will be submitting a supplemental Information Disclosure Statement (IDS) for this application soon, and respectfully ask the Examiner to consider the IDS, and the references cited therein, in reviewing this communication.

***II. Claim Rejections – 35 U.S.C. § 102***

The Examiner rejected independent claims 1, 15, and 28 under 35 U.S.C. § 102 as being anticipated by both Aikins and Buzzi (claims 1 and 15) or by both Aikins and Lowery (claim 28). Applicants traverse the rejections. The cited references, alone or in combination, do not teach or suggest each of the elements of claim 1, 15, or 28. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have amended each of claims 1, 15, and 28. Furthermore, applicants have presented arguments below showing that each of these rejected independent claims and their dependent claims should be allowed.

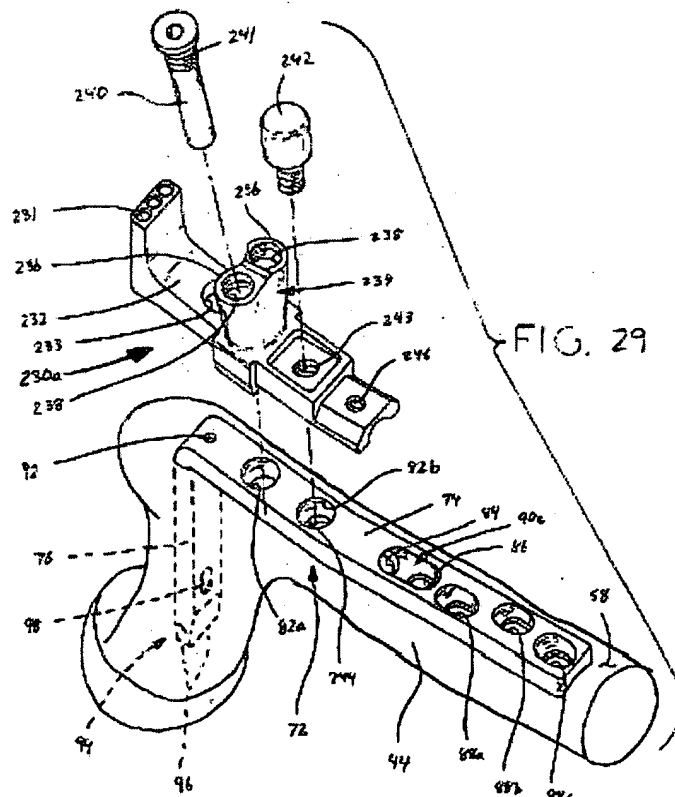
Claims 1 and 4-14

Claim 1, as amended, is directed to a guide device as follows:

1. (Currently Amended) A guide device for guiding a hole-forming tool and/or a fastener to a bone plate, comprising:
  - a coupling portion configured to be connected to the bone plate adjacent a bone; and
  - a guide portion connected to the coupling portion such that the guide portion is disposed across the bone from the coupling portion, the guide portion being configured to guide the hole-forming tool and/or fastener into the bone and then to a predefined position of the bone plate.

Neither Aikins nor Buzzi teaches or suggests every element of amended claim 1 for the reasons set forth below.

Aikins relates to a blade plate and an instrument for securing the blade plate to bone. Blade plate 72 and an insertion guide 230a that mounts onto the outer surface of the blade plate are presented in Figure 29 of Aikins:



Applicants assert that Aikins does not teach or suggest every element of amended claim 1. Claim 1 is directed to a guide device comprising a guide portion connected to a coupling portion. The coupling portion is configured to be connected to a bone plate adjacent a bone, and the guide portion is disposed across the bone from the coupling portion. In contrast, Aikins discloses an insertion guide 230a that does not have any portions disposed across the bone from each other, much less the recited coupling portion and guide portion. Aikins thus does not teach or suggest every element of claim 1.

In contrast to Buzzi, claim 1, as amended, recites a guide device comprising “a coupling portion configured to be connected to the bone plate.” Buzzi does not teach or suggest a guide device configured to be connected to a bone plate. The Examiner apparently took the same position in the Office action because dependent claim 2 (now canceled), which depended from claim 1 and recited a bone plate, was not rejected over Buzzi.

In summary, neither Aikins nor Buzzi teaches or suggests every element of amended claim 1. Claim 1 thus should be allowed. Claims 4-14, which depend from claim 1, also should be allowed for at least the same reasons as claim 1.

Claims 15-27

Claim 15 is directed to a guide device as follows:

15. (Currently Amended) A guide device for guiding a hole-forming tool and/or a fastener to a connective feature of a bone plate, comprising:  
a coupling portion configured to be connected to the bone plate adjacent a bone; and  
a guide portion connected to the coupling portion and configured to be disposed across the bone from the coupling portion in a predefined relation to the bone plate, such that the guide portion defines a guide axis extending from the guide portion, through the bone, and then to the connective feature of the bone plate.

Neither Aikins nor Buzzi teaches or suggests every element of amended claim 15. For example, as described above in relation to claim 1, Aikins does not teach or suggest a guide portion “disposed across the bone from the coupling portion,” and Buzzi does not teach or suggest “a coupling portion configured to be connected to the bone plate.” For at least these reasons, claim 15 should be allowed. Furthermore, claims 16-27, which depend from 15, also should be allowed for at least the same reasons as claim 15.

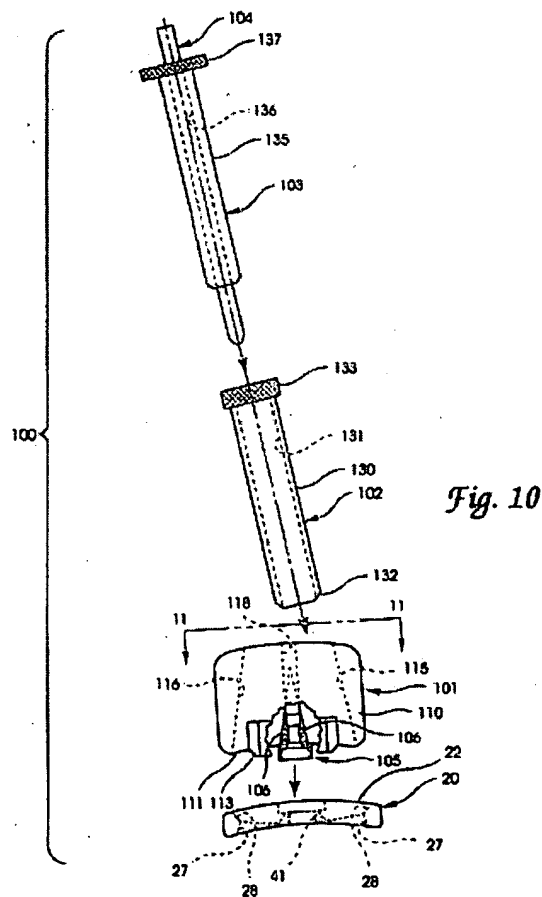
Claims 28-31

Claim 28 is directed to a system for fixing a bone as follows:

28. (Currently Amended) A system for fixing a bone, comprising:  
a bone plate including a connective feature; and  
a guide device configured to guide a hole-forming tool and/or a fastener through the bone and then to the connective feature, including (1) a coupling portion configured to be connected to the bone plate, and (2) a guide portion connected to the coupling portion and configured to be disposed across the bone from the coupling portion in a predefined relation to the bone plate so that the guide portion defines at least one guide axis for the connective feature of the bone plate.

Neither Aikins nor Lowery discloses a guide portion “disposed across the bone from the coupling portion,” as described above in relation to claim 1 for Aikins and addressed below for Lowery.

Lowery relates to an anterior cervical plating system:



In the Office action, the Examiner suggested that Lowery discloses a guide portion (101) and a coupling portion (113). However, Lowery's "guide portion" is not disposed across the bone from Lowery's "coupling portion."

In summary, neither Aikins nor Lowery teaches or suggests every element of claim 28. Claim 28 thus should be allowed. In addition, claims 29-31, which depend from claim 28, also should be allowed for at least the same reasons as claim 28.

### **III. Claim Rejections – 35 U.S.C. § 103**

The Examiner rejected independent claim 43 under 35 U.S.C. § 103(a) as being unpatentable over Aikins in view of Talos. Applicants traverse the rejection. The cited references, alone or in combination, do not teach or suggest every element of claim 43. Nevertheless, to expedite the issuance of a patent, and to more particularly point out and distinctly claim aspects of the invention that applicants would like to patent now, applicants have amended claim 43.

Claim 43 is directed to a system for fixing a bone with a bone plate:

43. (Currently Amended) A system for fixing a bone with a bone plate, comprising:

- means for coupling to the bone plate;
- means for defining, at least substantially external to the bone, a guide axis that extends through the bone; and
- means for directing a bone screw along the guide axis from a position across the bone from the means for coupling, through the bone, and into an opening of the bone plate.

Neither Aikins nor Talos teaches or suggests means for directing "from a position across the bone from the means for coupling." Accordingly, claim 43 should be allowed.

#### **IV. New Claims and Other Claim Amendments**

The current communication adds new claims 56 and 57. Each of the new claims is fully supported by the application. Furthermore, each of the new claims is patentable over the art of record. For example, claim 56 recites an “extension portion extending around the bone, when the bone plate is secured to the bone, such that the guide portion and the coupling portion oppose one another across the bone.” Claim 57 recites, for example, “a guide device including a guide portion and being structured to attach to the bone plate and to extend around the bone from the bone plate such that the guide portion opposes the bone plate across the bone.” Therefore, each of claims 56 and 57 should be allowed.

Applicants also have made several claim amendments intended to improve the clarity of the claim language without changing claim scope. For example, applicants have amended claims 1, 15, and 28 to replace “at least one of a hole-forming tool and a fastener” with “a hole forming tool and/or a fastener.” This amendment is intended to clarify the meaning of the term “at least one of” by using a different phrase (“and/or”) of equivalent meaning and should not change the scope of the claim. Furthermore, applicants have amended claim 23 to reposition the term “distal” in order to improve clarity without changing the scope of the claim.

#### **V. Conclusion**

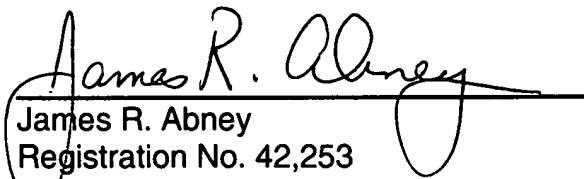
Applicants believe that this application is now in condition for allowance, in view of the above amendments and remarks. Accordingly, applicants respectfully request that the Examiner issue a Notice of Allowability covering the pending claims. If the



Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

KOLISCH HARTWELL, P.C.

A handwritten signature in dark ink, appearing to read "James R. Abney", is written over a horizontal line.

James R. Abney  
Registration No. 42,253  
Customer No. 23581  
520 S.W. Yamhill Street, Suite 200  
Portland, Oregon 97204  
Telephone: (503) 224-6655  
Facsimile: (503) 295-6679  
Attorney for Assignee

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail, postage prepaid, in an envelope addressed to: Mail Stop AMENDMENT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on October 24, 2005

A handwritten signature in dark ink, appearing to read "Lisa Holstein", is written over a horizontal line.

Lisa Holstein